

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

MAX KELLEY,

Plaintiff,

v.

OFFICER GALLOWAY, ET AL.,

Defendants.

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CIVIL ACTION NO. 5:17-CV-00026-RWS-CMC

ORDER

Max Kelley, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. § 1983 complaining of alleged violations of his constitutional rights. This Court referred the case to the United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

The Magistrate Judge ordered Plaintiff to pay the statutory filing fee or to submit an application for leave to proceed *in forma pauperis* to be accompanied by a certified inmate trust account statement, as required by 28 U.S.C. § 1915(b). The order was sent to the Plaintiff but was returned as undeliverable. To date, Plaintiff has not notified the Court of his present mailing address or current whereabouts, despite the fact the lawsuit form which he signed specifically states it is the plaintiff's responsibility to inform the Court of any change of address and failure to do so could result in the dismissal of the case.

After review of the pleadings and record, the Magistrate Judge issued a Report recommending dismissal of the lawsuit without prejudice for failure to prosecute or to obey an order of the Court, with the statute of limitations suspended for a period of 90 days. A copy of this Report was sent to Plaintiff at his last known address, return receipt requested, but no objections have been received.

Accordingly, he is not entitled to *de novo* review by the District Judge of those findings, conclusions and recommendations, and except upon grounds of plain error, he is barred from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. 28 U.S.C. § 636(b)(1)(C); *Douglass v. United Servs. Auto. Assoc.*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc).

Nonetheless, the Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge and agrees with the Report of the Magistrate Judge. See *United States v. Raddatz*, 447 U.S. 667, 683 (1980) (“[T]he statute permits the district court to give to the magistrate’s proposed findings of fact and recommendations ‘such weight as [their] merit commands and the sound discretion of the judge warrants,’”) (quoting *Mathews v. Weber*, 23 U.S. 261, 275 (1976)). It is accordingly


ORDERED the Report of the Magistrate Judge (Docket No. 4) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED the above-styled civil action is **DISMISSED WITHOUT PREJUDICE** for failure to prosecute. It is further

ORDERED the statute of limitations is **SUSPENDED** for a period of 90 days following the date of entry of final judgment in this case. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby **DENIED**.

So ORDERED and SIGNED this 18th day of September, 2019.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE